

-FILED-

DEC 23 2019

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

At  
ROBERT N. TRGOVICH, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

This form to sue for employment discrimination. NEATLY print in ink (or type) your answers.]

MARK TIMS JARDINS  
[You are the **PLAINTIFF**, print your full name on this line.]

v.

Red lobster LLC.  
[The **DEFENDANT** is who you are suing.]

Case Number 2:19 CV 493  
[For a new case in this court, leave blank.  
The court will assign a case number.]

[The top of this page is the caption. Everything you file in this case must have the same caption.  
Once you know your case number, it is VERY IMPORTANT that you include it on everything you send  
to the court for this case. DO NOT send more than one copy of anything to the court.]

**EMPLOYMENT DISCRIMINATION COMPLAINT**

1. My address is: 8258 Chestnut Court  
Frankfort IL, 60423
2. My telephone number is: (815) 690-4607
3. The Defendant's address is: Red lobster 9311 West Carmel Ave  
IN 46321
4. This action is brought for employment discrimination pursuant to:  
☒ Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17.  
[race, color, gender, religion, national origin]  
☒ Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 to 634.  
☒ Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12112 to 12117.  
☒ Other: Defamation of Character.
5. I filed a charge of discrimination with the Equal Employment Opportunity Commission or the  
Indiana Civil Rights Commission on: EEOC in
6. The date on my Notice of Right to Sue letter is: 9-23-2019
7. The date I received my Notice of Right to Sue letter was: 9-23-2019  
23  
9-26-2019  
AS

[DO NOT write in the margins or on the back of any pages. Attach additional pages if necessary.]

### CLAIMS and FACTS

DO: Write a short and plain statement using simple English words and sentences.

**DO NOT:** Quote from cases or statutes, use legal terms, or make legal arguments.

DO: Explain when, where, why, and how the defendant discriminated against you.

DO: Include every fact necessary to explain your case and describe your injuries or damages.

DO: Number any documents you attach and refer to them by number in your complaint.

**DO NOT:** Include social security numbers, dates of birth, or the names of minors.

DO: Number your paragraphs. [The first paragraph has been numbered for you.]

1. I have worked for red Lobster for 30 years. on 28 of may 2018, I conducted with 2 other managers end the month inventory. on 5/29/2018 my Boss Ken Kapke called me on my day off, Swearing at me, saying there is a discrepancies in the inventory. I have a history of Anxiety & depression withh he is aware of (Ken Kapke). I Due to Swearing, I end up in the hospital & 8 weeks of intensive out patient program. Ken Kapke approved my leave so I can get myself better. During my leave of 51 days. Ken Kapke replaced me with another general manager 20 years younger the I am. I am 52 years old & the new general manager 32 years. when I was released to come back to work on 7/18/2018, I text Ken Kapke and he replied to meet him in other red lobster (Motteson IL) and he termed me. my position was general manager at Munster Indiana Red lobster. Your honor I have all documents & text to support my case. Thank you.

**RELIEF** – If you win this case, what do you want the court to order the defendant to do?

to not do it to other employees

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**DOCUMENTS** – I have attached a copy of the following documents:

- ☐ Charge Of Discrimination form filed with the Equal Employment Opportunity Commission or the Indiana Civil Rights Commission
- ☒ Notice of Right to Sue letter
- ☐ Other: \_\_\_\_\_
- 

**FILING FEE** – Are you paying the filing fee?

- ☒ Yes, I am paying the \$400.00 filing fee. I understand that I am responsible to notify the defendant about this case as required by Federal Rule of Civil Procedure 4. *[If you want the clerk to sign and seal a summons, you need to prepare the summons and submit it to the clerk.]*
- ☐ No, I am filing a Motion to Proceed In Forma Pauperis and asking the court to notify the defendant about this case.

[Initial Each Statement]

- X I will keep a copy of this complaint for my records.
- X I will promptly notify the court of any change of address.
- X I declare **under penalty of perjury** that the statements in this complaint are true.

MARK TIMEJARDINE  
Signature

12-23-2019  
Date

**DISMISSAL AND NOTICE OF RIGHTS**

To: **Mark Timejardine**  
**8258 West Chestnut Court**  
**Frankfort, IL 60423**

From: **Indianapolis District Office**  
**101 West Ohio St**  
**Suite 1900**  
**Indianapolis, IN 46204**

☐

On behalf of person(s) aggrieved whose identity is  
 CONFIDENTIAL (29 CFR §1601.7(c))

EEOC Charge No.

EEOC Representative

Telephone No.

**440-2019-04673**

**Frederick J. BruBaker,**  
**Enforcement Supervisor**

**(463) 999-1148****THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

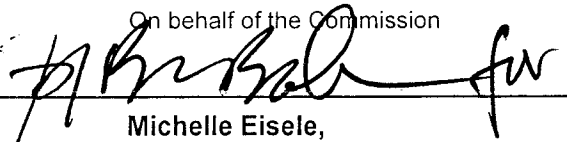
**- NOTICE OF SUIT RIGHTS -**

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



**Michelle Eisele,**  
**District Director**

**SEP 23 2019**

(Date Mailed)

Enclosures(s)

cc: **Tonya Heron**  
**Counsel, Employment & Litigation**  
**450 S. ORANGE AVENUE**  
**Suite 800**  
**Orlando, FL 32801**

**Steven Saltzman**  
**STEVE SALTZMAN LAW OFFICE**  
**200 South Michigan, Suite 201**  
**Chicago, IL 60604**

**INFORMATION RELATED TO FILING SUIT  
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.  
If you also plan to sue claiming violations of State law, please be aware that time limits and other  
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),  
the Genetic Information Nondiscrimination Act (GINA), or the Age  
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

**PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):**

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

**ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:**

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

**ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:**

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

***IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.***

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**NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA):** The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

**If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).**

**“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):**

- **The limitations from the impairment no longer have to be severe or significant** for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **“major life activities” now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- **Only one** major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, **the beneficial effects of “mitigating measures”** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.
- An impairment that is **“episodic”** (e.g., epilepsy, depression, multiple sclerosis) or **“in remission”** (e.g., cancer) is a disability if it **would be substantially limiting when active**.
- An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months**.

**“Regarded as” coverage:**

- An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively **BOTH** transitory (lasting or expected to last six months or less) **AND** minor.
- A person is not able to bring a failure to accommodate claim *if* the individual is covered only under the “regarded as” definition of “disability.”

***Note: Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability. For more information, consult the amended regulations and appendix, as well as explanatory publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).***